



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Anchorage Fish & Wildlife Field Office  
605 West 4<sup>th</sup> Avenue, Room G-61  
Anchorage, Alaska 99501-2249



In reply refer to:  
AFWFO

April 5, 2011

Cindi Godsey  
United State Environmental Protection Agency  
Room 537, Federal Building  
222 West 7<sup>th</sup> Avenue, # 19  
Anchorage, AK 99513-7588

Re: Statewide General Permit No. AKG371000 (*Consultation number 2010-0072*)

Dear Ms. Godsey,

On December 30, 2010, the US Fish and Wildlife Service (Service) submitted recommendations to the Environmental Protection Agency (EPA) regarding the draft general permit (GP) AKG371000 for medium size suction dredge placer mining. We recommended changes to the draft permit to avoid and minimize potential impacts to threatened and endangered species and designated critical habitat. The comments below amend those recommendations following the Service's review of EPA's proposed revisions to the draft permit.

1. Please change the term "*National Critical Habitat Areas*" to "designated critical habitat" throughout the document, and refer to each specific critical habitat unit, where applicable.
2. Recommendations for Part I.C.:
  - a. Please change US Fish and Wildlife Service contact information. The contact number for the Fairbanks Field office is 907-456-0441, and for the Anchorage Field Office is 907-271-1467.
  - b. Because the Service is not recommending complete prohibition of suction dredging in all critical habitat, the language in Part I.C.1 should be modified. Below, we provided the original text in italics, with our suggested changes in red. Deletions are indicated with a strikethrough, additions are underlined. Also see the recommendations for operating in designated polar bear critical habitat under #3.

*This general permit does not apply to facilities that are proposed to be located in National Parks System Units (i.e., Parks and Preserves), National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, ~~National Critical Habitat Areas~~ within one nautical mile of a Steller sea lion rookery or haulout area, or waters adjacent to areas designated as wild under the Wild & Scenic Rivers Act.*

~~*National*~~ *This general permit does not apply to facilities operating within one nautical mile of Critical Habitat Areas have been designated under the Endangered Species Act (ESA) for both the spectacled eider, and Steller's eiders, and northern sea otter under the Endangered Species Act (ESA). A map in Appendix B shows the general areas of the designated critical habitat. If your facility is proposed for any of the following quadrangles, please consult <http://alaska.fws.gov/fisheries/endangered/consultation.htm> or contact the*

~~Fairbanks office of the US Fish and Wildlife Service (USFWS) at (907) 456-0441 for the Fairbanks Field Office, or (907) 271-1467 for the Anchorage Field Office (907) 456-0499 or the Federal Register at 66 FR 8849 February 2, 2001, and 66 FR 9145 February 6, 2001, for further details.~~

Table 1. Quads containing critical habitat for spectacled eider, and Steller's eiders, and northern sea otter.

<u>ADAK</u>	<u>HOOPER BAY</u>	<u>NUNIVAK ISLAND</u>	<u>ST. MICHAEL</u>
<u>AFOGNAK</u>	<u>ILIAMNA</u>	<u>POINT HOPE</u>	<u>STEPOVAK BAY</u>
<u>AMUKTA</u>	<u>KAGUYAK</u>	<u>POINT LAY</u>	<u>SUTWIK ISLAND</u>
<u>ATKA</u>	<u>KARLUK</u>	<u>PORT MOLLER</u>	<u>TRINITY ISLANDS</u>
<u>ATTU</u>	<u>KENAI</u>	<u>RAT ISLANDS</u>	<u>UGASHIK</u>
<u>BAIRD INLET</u>	<u>KISKA</u>	<u>SAMALGA ISLAND</u>	<u>UMNAK</u>
<u>CHIGNIK</u>	<u>KODIAK</u>	<u>SEGUAM</u>	<u>UNALAKLEET</u>
<u>COLD BAY</u>	<u>KUSKOKWIM BAY</u>	<u>SELDOVIA</u>	<u>UNALASKA</u>
<u>DELONG MOUNTAINS</u>	<u>MARSHALL</u>	<u>SIMEONOF ISLAND</u>	<u>UNIMAK</u>
<u>FALSE PASS</u>	<u>MT. KATMAI</u>	<u>SOLOMON</u>	<u>WAINWRIGHT</u>
<u>GARELOI ISLAND</u>	<u>NORTON BAY</u>	<u>ST. LAWRENCE</u>	

- c. We recommend Part I. C. include timing restrictions (same as those in AKG375000; EPA 2007) prohibiting activities from September 1 through April 30 within 4.0 nm of locations that are documented to have been used by 125 or more Steller's eiders as wintering areas. Our information indicates that 125 or more wintering Steller's eiders have been documented in the quads listed in Table 2.

Table 2. Locations of Steller's eider concentrations. Quad names in **bold** are not listed in the Table 1; they contain concentrations of eiders, but no critical habitat.

<b>Location</b>	<b>Quad</b>
The coastal seaward waters from Tununuk to Toksook Bay on Nelson Island	NUNIVAK ISLAND
The south side of Nunivak Island from Cape Mohican to Atahgo Point	NUNIVAK ISLAND, <b>CAPE MENDENHALL</b>
The coastal seaward waters from the south end of Carter Spit north to Jacksmith Bay	KUSKOKWIM BAY, <b>GOODNEWS BAY</b>
Goodnews Bay	<b>GOODNEWS BAY</b>
Chagvan Bay	<b>HAGEMEISTER ISLAND</b>
Egegik Bay	<b>NAKNEK</b>
Ugashik Bay and the mouth of the Cinder River	UGASHIK, <b>BRISTOL BAY</b>
Bechevin Bay	COLD BAY, FALSE PASS
Cape Lapin	UNIMAK
Akutan Harbor	UNIMAK
Unalaska Bay	UNALASKA
The coastline between Cape Star on Umnak Island and the western tip of Samalga Island	SAMALGA ISLAND
The south coast of the Ikatan Peninsula between Otter Cove and Cape Pankof on Unimak Island	FALSE PASS

Table 2. Continued.

Thin Point to the east end of Kinzarof Lagoon in Cold Bay	FALSE PASS, COLD BAY
Sanak Islands	FALSE PASS
Moss Cape near Volcano Bay on the Alaska Peninsula	PORT MOLLER
Bear Bay	COLD BAY
Volcano Bay	PORT MOLLER
Coal Bay to McGinty Point	PORT MOLLER
Bay Point to Unga Spit on Unga Island	PORT MOLLER
Zachary Bay on Unga Island	PORT MOLLER
East Head to Popof Island airstrip on Popof Island	PORT MOLLER
Chignik Lagoon	CHIGNIK
Wide Bay east to the mouth of Pass Creek and Hartman Island	UGASHIK
The following locations near Kodiak Island: Ugak Bay, Pasagshak Bay, Cape Chiniak, Kalsin Bay, Middle Bay, Woman's Bay, St. Paul Harbor, Sitkinak Strait, Tugidak Passage, Geese Islands	KODIAK, <b>KAGUYAK,</b> <b>TRINITY ISLANDS</b>
Seldovia Bay in Kachemak Bay	SELDOVIA
Homer Spit to Bishop's Beach	SELDOVIA
Happy Valley to Clam Gulch in Cook Inlet	SELDOVIA, KENAI
Kirschner Lake outlet to Rocky Cove on the western shore of Cook Inlet	ILIAMNA

3. Recommendations regarding activities in polar bear critical habitat: The EPA has drafted the following language for inclusion in the GP. Our recommendations are included. The original text is italicized, and our suggested changes are in red. Deletions are indicated with a strikethrough, additions are underlined.

#### 1.4.3 POLAR BEAR CRITICAL HABITAT

1.4.3.1 Permittees wishing to operate in Polar Bear Critical Habitat shall note this on the NOI. The following table contains a list of quadrangle maps where this habitat can be found. More detailed maps can be found at [http://alaska.fws.gov/fisheries/mmm/polarbear/esa.htm#critical\\_habitat](http://alaska.fws.gov/fisheries/mmm/polarbear/esa.htm#critical_habitat)

BAIRD INLET	HOOPER BAY	SAGAVANIRKTOK
BAIRD MOUNTAINS	KOTZEBUE	SELAWIK
BARROW	KUSKOKWIM BAY	SHISHMAREF
BARTER ISLAND	KWIGUK	SOLOMON
BEECHEY POINT	MEADE RIVER	ST. LAWRENCE
BENDELEBEN	MT. MICHELSON	ST. MICHAEL
BLACK	NOATAK	TELLER
CANDLE	NOME	TESHEKPUK
DELONG MOUNTAINS	NORTON BAY	UNALAKLEET
DEMARICATION POINT	NUNIVAK ISLAND	WAINWRIGHT
FLAXMAN ISLAND	POINT HOPE	
HARRISON BAY	POINT LAY	

*1.4.3.2 Barrier island critical habitat and areas within no disturbance zones are excluded from coverage under this GP. Due to the high level of suction dredge activity around Nome, a map showing the nearest barrier island to Nome is barrier islands near Nome are shown in Appendix C. The website above contains maps of other islands.*

*1.4.3.3 Activities within denning critical habitat (within the North Slope Borough only) are authorized under this GP only from April 30 through October 1 each year.*

*1.4.3.4 Intentional harassment of polar bears is prohibited. If a polar bear is observed during operations, an observation sheet must be completed and submitted to the US Fish and Wildlife Service at the time of the annual report, January 31st for the previous year. An observation sheet is included in Appendix E.*

4. Recommended changes to Part I.E.2.d:

- a. This section infers, but does not specifically state that suction dredgers proposing to operate in the listed quadrangles need an individual permit. This section then refers the holder of the GP to the Service for more information if his/her proposed facility is located in designated critical habitat areas which are excluded from coverage under the GP. We recommend modification to this section specifically directing an operator proposing to work in excluded areas to apply for an individual permit. We further recommend that this section refer the operator to guidance on how to obtain an individual permit instead of referring him/her to the Service. The Service has no information regarding how to obtain an individual permit.
- b. Part I.E.2.d states,  
*“when the US Fish & Wildlife Service believes that consultation under Section 7 of the Endangered Species Act is necessary for facilities proposed in or near marine coastal waters in the following listed Alaska quadrangles to protect Steller’s eiders, spectacled eiders, sea otters, or their habitat.”*

The Service will neither be aware of a proposed individual permit, nor able to determine if consultation under section 7 is appropriate unless the Endangered Species Field Office is contacted. Therefore, we recommend:

- i. Changing the above italicized language to: *“if the proposed discharge will occur in marine coastal waters or outside of approved timing windows listed in Part I.C. These waters contain threatened or endangered species or their habitat, and may be adversely affected from wastewater discharges. The Regional Administrator may authorize an individual NPDES permit for activities in these excluded areas, if after coordination with the US Fish and Wildlife Service, measures to minimize impacts on listed species and/or their critical habitat can be incorporated into the individual permit.”*
- ii. Providing information on how to apply for an individual permit to the applicant.
- c. Part I.E.2.d infers (by use of the term “land management agency”) that marine waters or habitat for listed species is property of the Service by stating, “Any person denied coverage under this part must apply for and obtain coverage under either (1) an individual permit; or (2) another applicable watershed-specific general permit. Upon receipt of any such application, EPA will determine whether the permit terms requested by the land management agency should be included in the applicable permit.” The Service recommends deleting the second sentence beginning with “Upon” from Part I.E.2.d because permit terms from a land management agency would not originate from a

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section 7 consultation or from other communications with the Service regarding threatened or endangered species.

The Service believes that with the exclusion of these sensitive areas and critical habitat areas, timing restrictions, and the requirement for individual permits (and associated analyses) for dischargers wishing to operate with the prohibited areas, the likelihood of adverse effects to federally protected species are very low. We suggest that “may affect, but is not likely to adversely affect” is the appropriate conclusion for this action and we encourage the EPA to complete section 7 consultation for authorization of this GP.

Thank you for the opportunity to comment on the proposed draft GP and for your continued efforts to protect threatened and endangered species. This letter relates only to federally listed or proposed species and/or designated or proposed critical habitat under jurisdiction of the Service. It does not address species under the jurisdiction of National Marine Fisheries Service, or other legislation or responsibilities under the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Clean Water Act, National Environmental Policy Act, Marine Mammal Protection Act, or Bald and Golden Eagle Protection Act. For more information on the endangered species consultation process, please see [http://alaska.fws.gov/fisheries/endangered/consultation\\_guide.htm](http://alaska.fws.gov/fisheries/endangered/consultation_guide.htm). If you have any questions, please contact me at (907) 271-2066 and refer to consultation number 2010-0072.

Sincerely,



Kimberly Klein  
Endangered Species Biologist

cc: Rick Cool, EPA

Encl: Enclosure 1, “Appendix B”

Literature Cited

Environmental Protection Agency. 2007. AKG-37-5000 Authorization to Discharge Under the National Pollutant Discharge Elimination System for Alaskan Small Suction Dredge Placer Miners [General Permit No.: AKG-37-5000]. Online at:  
<http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/General+NPDES+Permits>

Enclosure 1. Map of designated critical habitat recommended for inclusion under “Appendix B” of the General Permit authorizing suction dredge placer mining using a medium-sized suction dredge.

